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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION**

17 | CARVER INTERNATIONAL,
18 | INC., a California Corporation,

Plaintiff,

VS.

20 SURFSKATE INDUSTRIES, LLC,
21 a Florida Limited Liability
22 Company,

Defendant.

CASE NO.: 8:15-cv-01348-AG-DFMx

The Hon. Andrew J. Guilford

[Discovery Document: Referred to
Magistrate Douglas F. McCormick]

[PROPOSED] PROTECTIVE ORDER

Complaint Filed: August 24, 2015

1 1. PURPOSES AND LIMITATIONS

2 Discovery in this action is likely to involve confidential, proprietary, or
 3 private information requiring special protection from public disclosure and from
 4 use for any purpose other than this litigation. Thus, the Court enters this Protective
 5 Order. This Order does not confer blanket protections on all disclosures or
 6 responses to discovery, and the protection it gives from public disclosure and use
 7 extends only to the specific material entitled to confidential treatment under the
 8 applicable legal principles. This Order does not automatically authorize the filing
 9 under seal of material designated under this Order. Instead, the parties must
 10 comply with L.R. 79-5.1 if they seek to file anything under seal. This Order does
 11 not govern the use at trial of material designated under this Order.

12 2. DEFINITIONS

13 2.1 Challenging Party: a Party or Non-Party that challenges the
 14 designation of information or items under this Order.

15 2.2 “CONFIDENTIAL” Information or Items: information (regardless of
 16 how it is generated, stored or maintained) or tangible things that qualify for
 17 protection under Rule 26(c) of the Federal Rules of Civil Procedure.

18 2.3 Counsel (without qualifier): Outside Counsel of Record and House
 19 Counsel (as well as their support staff).

20 2.4 Designated House Counsel: House Counsel who seek access to
 21 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information in this
 22 matter.

23 2.5 Designating Party: a Party or Non-Party that designates information
 24 or items that it produces in disclosures or in responses to discovery as
 25 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
 26 ONLY.”

27 2.6 Disclosure or Discovery Material: all items or information within the
 28 scope of Rules 26 and 34 of the Federal Rules of Civil Procedure, regardless of the

1 medium or manner in which it is generated, stored, or maintained (including,
2 among other things, testimony, transcripts, and tangible things), that are produced
3 or generated in disclosures or responses to discovery in this matter.

4 2.7 Expert: a person with specialized knowledge or experience in a
5 matter pertinent to the litigation who: (a) has been retained by a Party or its
6 counsel to serve as an expert witness or as a consultant in this action; (b) is not a
7 current employee of a Party or of a Party's competitor; and, (c) at the time of
8 retention, is not anticipated to become an employee of a Party or of a Party's
9 competitor.

10 2.8 **"HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY"**

11 Information or Items: extremely sensitive "Confidential Information or Items,"
12 disclosure of which to another Party or Non-Party would create a substantial risk of
13 serious harm that could not be avoided by less restrictive means.

14 2.9 House Counsel: attorneys who are employees of a party to this action.
15 House Counsel does not include Outside Counsel of Record or any other outside
16 counsel.

17 2.10 Non-Party: any natural person, partnership, corporation, association,
18 or other legal entity not named as a Party to this action.

19 2.11 Outside Counsel of Record: attorneys who are not employees of a
20 party to this action but are retained to represent or advise a party to this action and
21 have appeared in this action on behalf of that party or are affiliated with a law firm
22 which has appeared on behalf of that party.

23 2.12 Party: any party to this action, including all of its officers, directors,
24 employees, consultants, retained experts, and Outside Counsel of Record (and their
25 support staffs).

26 2.13 Producing Party: a Party or Non-Party that produces Disclosure or
27 Discovery Material in this action.

28 2.14 Professional Vendors: persons or entities that provide litigation

1 support services (*e.g.*, photocopying, videotaping, translating, preparing exhibits or
 2 demonstrations, and organizing, storing, or retrieving data in any form or medium)
 3 and their employees and subcontractors.

4 2.15 Protected Material: any Disclosure or Discovery Material that is
 5 designated as “CONFIDENTIAL,” or “HIGHLY CONFIDENTIAL –
 6 ATTORNEYS’ EYES ONLY.”

7 2.16 Receiving Party: a Party that receives Disclosure or Discovery
 8 Material from a Producing Party.

9 3. SCOPE – DESIGNATING PROTECTED MATERIAL

10 3.1 Over-Designation Prohibited. Any Party or Non-Party who designates
 11 information or items for protection under this Order as “CONFIDENTIAL,”
 12 “HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY,” or “HIGHLY
 13 CONFIDENTIAL – SOURCE CODE” (a “designator”) must only designate
 14 specific material that qualifies under the appropriate standards. To the extent
 15 practicable, only those parts of documents, items, or oral or written
 16 communications that require protection shall be designated. Designations with a
 17 higher confidentiality level when a lower level would suffice are prohibited. Mass,
 18 indiscriminate, or routinized designations are prohibited. Unjustified designations
 19 expose the designator to sanctions, including the Court’s striking all confidentiality
 20 designations made by that designator. Designation under this Order is allowed only
 21 if the designation is necessary to protect material that, if disclosed to persons not
 22 authorized to view it, would cause competitive or other recognized harm. Material
 23 may not be designated if it has been made public, or if designation is otherwise
 24 unnecessary to protect a secrecy interest. If a designator learns that information or
 25 items that it designated for protection do not qualify for protection at all or do not
 26 qualify for the level of protection initially asserted, that designator must promptly
 27 notify all parties that it is withdrawing the mistaken designation.

28

1 3.2 Manner and Timing of Designations. Designation under this Order
 2 requires the designator to affix the applicable legend (“CONFIDENTIAL,”
 3 “HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY,” or “HIGHLY
 4 CONFIDENTIAL – SOURCE CODE”) to each page that contains protected
 5 material. For testimony given in deposition or other proceeding, the designator
 6 shall specify all protected testimony and the level of protection being asserted. It
 7 may make that designation during the deposition or proceeding, or may invoke, on
 8 the record or by written notice to all parties on or before the next business day, a
 9 right to have up to 21 days from the deposition or proceeding to make its
 10 designation.

11 3.2.1 A Party or Non-party that makes original documents or
 12 materials available for inspection need not designate them for protection
 13 until after the inspecting party has identified which material it would like
 14 copied and produced. During the inspection and before the designation, all
 15 material shall be treated as HIGHLY CONFIDENTIAL – ATTORNEY
 16 EYES ONLY. After the inspecting party has identified the documents it
 17 wants copied and produced, the producing party must designate the
 18 documents, or portions thereof, that qualify for protection under this Order.

19 3.2.2 Parties shall give advance notice if they expect a deposition or
 20 other proceeding to include designated material so that the other parties can
 21 ensure that only authorized individuals are present at those proceedings
 22 when such material is disclosed or used. The use of a document as an exhibit
 23 at a deposition shall not in any way affect its designation. Transcripts
 24 containing designated material shall have a legend on the title page noting
 25 the presence of designated material, and the title page shall be followed by a
 26 list of all pages (including line numbers as appropriate) that have been
 27 designated, and the level of protection being asserted. The designator shall
 28 inform the court reporter of these requirements. Any transcript that is

1 prepared before the expiration of the 21-day period for designation shall be
2 treated during that period as if it had been designated HIGHLY
3 CONFIDENTIAL – ATTORNEY EYES ONLY unless otherwise agreed.
4 After the expiration of the 21-day period, the transcript shall be treated only
5 as actually designated.

6 3.3 Inadvertent Failures to Designate. An inadvertent failure to designate
7 does not, standing alone, waive protection under this Order. Upon timely assertion
8 or correction of a designation, all recipients must make reasonable efforts to ensure
9 that the material is treated according to this Order.

10 4. CHALLENGING CONFIDENTIALITY DESIGNATIONS

11 All challenges to confidentiality designations shall proceed under L.R. 37-1
12 through L.R. 37-4.

13 | 5. ACCESS TO DESIGNATED MATERIAL

14 5.1 Basic Principles. A Receiving Party may use designated material only
15 for this litigation. Designated material may be disclosed only to the categories of
16 persons and under the conditions described in this Order.

17 5.2 Disclosure of CONFIDENTIAL Material Without Further Approval.
18 Unless otherwise ordered by the Court or permitted in writing by the designator, a
19 Receiving Party may disclose any material designated CONFIDENTIAL only to:

20 5.2.1 The Receiving Party's outside counsel of record in this action
21 and employees of outside counsel of record to whom disclosure is
22 reasonably necessary;

23 5.2.2 The officers, directors, and employees of the Receiving Party to
24 whom disclosure is reasonably necessary, and who have signed the
25 Agreement to Be Bound (Exhibit A);

26 5.2.3 Experts retained by the Receiving Party's outside counsel of
27 record to whom disclosure is reasonably necessary, and who have signed the
28 Agreement to Be Bound (Exhibit A);

1 5.2.4 The Court and its personnel;

2 5.2.5 Outside court reporters and their staff, professional jury or trial
3 consultants, and professional vendors to whom disclosure is reasonably
4 necessary, and who have signed the Agreement to Be Bound (Exhibit A);

5 5.2.6 During their depositions, witnesses in the action to whom
6 disclosure is reasonably necessary and who have signed, or agreed under
7 oath to be bound by, the Agreement to Be Bound (Exhibit A); and

8 5.2.7 The author or recipient of a document containing the material,
9 or a custodian or other person who otherwise possessed or knew the
10 information; and,

11 5.2.8 Neutrals engaged by the Parties for the purpose of mediation
12 pursuant to Local Rule 16-15.4, ADR Procedure No. 3.

13 5.3 Disclosure of HIGHLY CONFIDENTIAL – ATTORNEY EYES
14 ONLY and HIGHLY CONFIDENTIAL – SOURCE CODE Material Without
15 Further Approval. Unless permitted in writing by the designator, a Receiving Party
16 may disclose material designated HIGHLY CONFIDENTIAL – ATTORNEY
17 EYES ONLY or HIGHLY CONFIDENTIAL – SOURCE CODE without further
18 approval only to:

19 5.3.1 The Receiving Party's outside counsel of record in this action
20 and employees of outside counsel of record to whom it is reasonably
21 necessary to disclose the information;

22 5.3.2 The Court and its personnel;

23 5.3.3 Outside court reporters and their staff, professional jury or trial
24 consultants, and professional vendors to whom disclosure is reasonably
25 necessary, and who have signed the Agreement to Be Bound (Exhibit A);
26 and

1 5.3.4 The author or recipient of a document containing the material,
2 or a custodian or other person who otherwise possessed or knew the
3 information.

4 5.3.5 Neutrals engaged by the Parties for the purpose of mediation
5 pursuant to Local Rule 16-15.4, ADR Procedure No. 3.

6 5.4 Procedures for Approving or Objecting to Disclosure of HIGHLY
7 CONFIDENTIAL – ATTORNEY EYES ONLY or HIGHLY CONFIDENTIAL –
8 SOURCE CODE Material to In-House Counsel or Experts. Unless agreed to in
9 writing by the designator:

10 5.4.1 A Party seeking to disclose to in-house counsel any material
11 designated HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY must
12 first make a written request to the designator providing the full name of the
13 in-house counsel, the city and state of such counsel's residence, and such
14 counsel's current and reasonably foreseeable future primary job duties and
15 responsibilities in sufficient detail to determine present or potential
16 involvement in any competitive decision-making. In-house counsel are not
17 authorized to receive material designated HIGHLY CONFIDENTIAL –
18 SOURCE CODE.

19 5.4.2 A Party seeking to disclose to an expert retained by outside
20 counsel of record any information or item that has been designated HIGHLY
21 CONFIDENTIAL – ATTORNEY EYES ONLY or HIGHLY
22 CONFIDENTIAL – SOURCE CODE must first make a written request to
23 the designator that (1) identifies the general categories of HIGHLY
24 CONFIDENTIAL – ATTORNEY EYES ONLY or HIGHLY
25 CONFIDENTIAL – SOURCE CODE information that the receiving party
26 seeks permission to disclose to the expert, (2) sets forth the full name of the
27 expert and the city and state of his or her primary residence, (3) attaches a
28 copy of the expert's current resume, (4) identifies the expert's current

1 employer(s), (5) identifies each person or entity from whom the expert has
 2 received compensation or funding for work in his or her areas of expertise
 3 (including in connection with litigation) in the past five years, and (6)
 4 identifies (by name and number of the case, filing date, and location of
 5 court) any litigation where the expert has offered expert testimony, including
 6 by declaration, report, or testimony at deposition or trial, in the past five
 7 years. If the expert believes any of this information at (4) - (6) is subject to a
 8 confidentiality obligation to a third party, then the expert should provide
 9 whatever information the expert believes can be disclosed without violating
 10 any confidentiality agreements, and the party seeking to disclose the
 11 information to the expert shall be available to meet and confer with the
 12 designator regarding any such confidentiality obligations.

13 5.4.3 A Party that makes a request and provides the information
 14 specified in paragraphs 4.4.1 or 4.4.2 may disclose the designated material to
 15 the identified in-house counsel or expert unless, within seven days of
 16 delivering the request, the Party receives a written objection from the
 17 designator providing detailed grounds for the objection.

18 5.4.4 All challenges to objections from the designator shall proceed
 19 under L.R. 37-1 through L.R. 37-4.

20 6. **SOURCE CODE**

21 6.1 **Designation of Source Code.** If production of source code is
 22 necessary, a Party may designate it as HIGHLY CONFIDENTIAL – SOURCE
 23 CODE if it is, or includes, confidential, proprietary, or trade secret source code.

24 6.2 **Location and Supervision of Inspection.** Any HIGHLY
 25 CONFIDENTIAL – SOURCE CODE produced in discovery shall be made
 26 available for inspection, in a format allowing it to be reasonably reviewed and
 27 searched, during normal business hours or at other mutually agreeable times, at an
 28 office of the designator’s counsel or another mutually agreeable location. The

1 source code shall be made available for inspection on a secured computer in a
 2 secured room, and the inspecting party shall not copy, remove, or otherwise
 3 transfer any portion of the source code onto any recordable media or recordable
 4 device. The designator may visually monitor the activities of the inspecting party's
 5 representatives during any source code review, but only to ensure that there is no
 6 unauthorized recording, copying, or transmission of the source code.

7 6.3 Paper Copies of Source Code Excerpts. The inspecting party may
 8 request paper copies of limited portions of source code that are reasonably
 9 necessary for the preparation of court filings, pleadings, expert reports, other
 10 papers, or for deposition or trial. The designator shall provide all such source code
 11 in paper form, including Bates numbers and the label "HIGHLY CONFIDENTIAL
 12 – SOURCE CODE."

13 6.4 Access Record. The inspecting party shall maintain a record of any
 14 individual who has inspected any portion of the source code in electronic or paper
 15 form, and shall maintain all paper copies of any printed portions of the source code
 16 in a secured, locked area. The inspecting party shall not convert any of the
 17 information contained in the paper copies into any electronic format other than for
 18 the preparation of a pleading, exhibit, expert report, discovery document,
 19 deposition transcript, or other Court document. Any paper copies used during a
 20 deposition shall be retrieved at the end of each day and must not be left with a
 21 court reporter or any other unauthorized individual.

22 7. PROSECUTION BAR

23 Absent written consent from the designator, any individual who receives
 24 access to HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY or HIGHLY
 25 CONFIDENTIAL – SOURCE CODE information shall not be involved in the
 26 prosecution of patents or patent applications concerning the field of the invention
 27 of the patents-in-suit for the receiving party or its acquirer, successor, predecessor,
 28 or other affiliate during the pendency of this action and for one year after its

1 conclusion, including any appeals. "Prosecution" means drafting, amending,
 2 advising on the content of, or otherwise affecting the scope or content of patent
 3 claims or specifications. These prohibitions shall not preclude counsel from
 4 participating in reexamination or *inter partes* review proceedings to challenge or
 5 defend the validity of any patent, but counsel may not participate in the drafting of
 6 amended claims in any such proceedings.

7 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
 8 IN OTHER LITIGATION

9 8.1 Subpoenas and Court Orders. This Order in no way excuses non-
 10 compliance with a lawful subpoena or court order. The purpose of the duties
 11 described in this section is to alert the interested parties to the existence of this
 12 Order and to give the designator an opportunity to protect its confidentiality
 13 interests in the court where the subpoena or order issued.

14 8.2 Notification Requirement. If a Party is served with a subpoena or a
 15 court order issued in other litigation that compels disclosure of any information or
 16 items designated in this action as CONFIDENTIAL, HIGHLY CONFIDENTIAL
 17 – ATTORNEY EYES ONLY, or HIGHLY CONFIDENTIAL – SOURCE CODE,
 18 that party must:

19 8.2.1 Promptly notify the designator in writing. Such notification
 20 shall include a copy of the subpoena or court order;

21 8.2.2 Promptly notify in writing the Party who caused the subpoena
 22 or order to issue in the other litigation that some or all of the material
 23 covered by the subpoena or order is subject to this Order. Such notification
 24 shall include a copy of this Order; and

25 8.2.3 Cooperate with all reasonable procedures sought by the
 26 designator whose material may be affected.

27 8.3 Wait For Resolution of Protective Order. If the designator timely
 28 seeks a protective order, the Party served with the subpoena or court order shall not

1 produce any information designated in this action as CONFIDENTIAL, HIGHLY
 2 CONFIDENTIAL – ATTORNEY EYES ONLY or HIGHLY CONFIDENTIAL –
 3 SOURCE CODE before a determination by the court where the subpoena or order
 4 issued, unless the party has obtained the designator's permission. The designator
 5 shall bear the burden and expense of seeking protection of its confidential material
 6 in that court.

7 **9. UNAUTHORIZED DISCLOSURE OF DESIGNATED MATERIAL**

8 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
 9 designated material to any person or in any circumstance not authorized under this
 10 Order, it must immediately (1) notify in writing the designator of the unauthorized
 11 disclosures, (2) use its best efforts to retrieve all unauthorized copies of the
 12 designated material, (3) inform the person or persons to whom unauthorized
 13 disclosures were made of all the terms of this Order, and (4) use reasonable efforts
 14 to have such person or persons execute the Agreement to Be Bound (Exhibit A).

15 **10. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
 16 **PROTECTED MATERIAL**

17 When a Producing Party gives notice that certain inadvertently produced
 18 material is subject to a claim of privilege or other protection, the obligations of the
 19 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B).
 20 This provision is not intended to modify whatever procedure may be established in
 21 an e-discovery order that provides for production without prior privilege review
 22 pursuant to Federal Rule of Evidence 502(d) and (e).

23 Without written permission from the designator or a Court order, a Party may
 24 not file in the public record in this action any designated material. A Party seeking
 25 to file under seal any designated material must comply with L.R. 79-5.1. Filings
 26 may be made under seal only pursuant to a court order authorizing the sealing of
 27 the specific material at issue. The fact that a document has been designated under
 28 this Order is insufficient to justify filing under seal. Instead, parties must explain

1 the basis for confidentiality of each document sought to be filed under seal.
2 Because a Party other than the designator will often be seeking to file designated
3 material, cooperation between the parties in preparing, and in reducing the number
4 and extent of, requests for under seal filing is essential. If a receiving party's
5 request to file designated material under seal pursuant to L.R. 79-5.1 is denied by
6 the Court, then the receiving party may file the material in the public record unless
7 (1) the designator seeks reconsideration within four days of the denial, or (2) as
8 otherwise instructed by the Court.

9 **11. FILING UNDER SEAL**

10 Without written permission from the designator or a Court order, a party
11 may not file in the public record in this action any designated material. A party
12 seeking to file under seal any designated material must comply with L.R. 79-5.1.
13 Filings may be made under seal only pursuant to a court order authorizing the
14 sealing of the specific material at issue. The fact that a document has been
15 designated under this Order is insufficient to justify filing under seal. Instead,
16 parties must explain the basis for confidentiality of each document sought to be
17 filed under seal. Because a party other than the designator will often be seeking to
18 file designated material, cooperation between the parties in preparing, and in
19 reducing the number and extent of, requests for under seal filing is essential. If a
20 receiving party's request to file designated material under seal pursuant to L.R. 79-
21 5.1 is denied by the Court, then the receiving party may file the material in the
22 public record unless (1) the designator seeks reconsideration within four days of
23 the denial, or (2) as otherwise instructed by the Court.

24 **12. FINAL DISPOSITION**

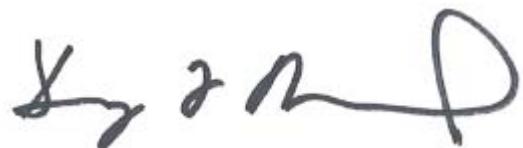
25 Within 60 days after the final disposition of this action, each Party shall
26 return all designated material to the designator or destroy such material, including
27 all copies, abstracts, compilations, summaries, and any other format reproducing or
28 capturing any designated material. The receiving party must submit a written

1 certification to the designator by the 60-day deadline that (1) identifies (by
2 category, where appropriate) all the designated material that was returned or
3 destroyed, and (2) affirms that the receiving party has not retained any copies,
4 abstracts, compilations, summaries, or any other format reproducing or capturing
5 any of the designated material. This provision shall not prevent counsel from
6 retaining an archival copy of all pleadings, motion papers, trial, deposition, and
7 hearing transcripts, legal memoranda, correspondence, deposition and trial
8 exhibits, expert reports, attorney work product, and consultant and expert work
9 product, even if such materials contain designated material. Any such archival
10 copies remain subject to this Order.

11 13. Any violation of this Order may be punished by any and all appropriate
12 measures including, without limitation, contempt proceedings and/or monetary
13 sanctions.

14 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.
15

16
17
18 DATED: March 7, 2016
19



Honorable Douglas F. McCormick
United States Magistrate Judge

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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print or type full name], of
4 _____ [print or type full address],
5 declare under penalty of perjury that I have read in its entirety and understand the
6 Protective Order (“Order”) that was issued by the United States District Court for
7 the Central District of California on _____ [date] in the case of *Carver*
8 *International, Inc. v. SurfSkate Industries, LLC*, Case No. 8:15-cv-01348-AG-
9 DFM. I agree to comply with and to be bound by all the terms of this Order, and I
10 understand and acknowledge that failure to so comply could expose me to
11 sanctions and punishment in the nature of contempt. I solemnly promise that I will
12 not disclose in any manner any information or item that is subject to this Order to
13 any person or entity except in strict compliance with the provisions of this Order.

14 I further agree to submit to the jurisdiction of the United States District
15 Court for the Central District of California for the purpose of enforcing the terms
16 of this Order, even if such enforcement proceedings occur after termination of this
17 action.

18 I hereby appoint _____ [print or type full name] of
19 _____ [print or type full address and
20 telephone number] as my California agent for service of process in connection with
21 this action or any proceedings related to enforcement of this Order.

23 Date: _____

24 City and State where sworn and signed: _____

25 Printed name: _____

26 || Signature: